



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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JUN 02 2011

Ref: 8EPR-N

Mr. Dan Dallas, Forest Supervisor
c/o Tom Malecek, Divide District Ranger
Rio Grande National Forest
13308 West Highway 160
Del Norte, CO 81132

RE: EPA Scoping Comments for the
Village at Wolf Creek Land Exchange
Environmental Impact Statement

Dear Mr. Dallas:

The U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the U.S. Department of Agriculture Forest Service (USFS) April 19, 2011, notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed Village at Wolf Creek Land Exchange. The Rio Grande National Forest has received a proposal from the Leavell-McCombs Joint Venture (LMJV) for the conveyance of a non-Federal land parcel in exchange for National Forest System lands. In accordance with our authorities and responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, *et seq.*, and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, EPA provides these scoping comments to inform USFS of issues that we believe to be significant and warrant explicit treatment during the NEPA process. In providing these comments, it is our goal to have these issues addressed in the EIS.

Project Description and Background

The proposed action involves the conveyance of 178 acres of non-Federal lands to the USFS in exchange for USFS lands totaling 204 acres. Both the non-Federal and the Federal parcels of land under consideration for the exchange are located within the Rio Grande National Forest in Mineral County, Colorado, approximately 25 miles northeast of the town of Pagosa Springs. The 178-acre non-Federal parcel is located just east of Wolf Creek Pass at approximately 10,300 feet in elevation and is comprised of spruce-fir forest, open meadows and wetlands. It adjoins the USFS lands on all sides and is located within the USFS-administered Special Use Permit (SUP) boundary for the Wolf Creek Ski Area. The 204-acre Federal parcel is just north and east of the non-Federal parcel, with the remaining portion of the non-Federal party's land (approximately 122 acres) separating the two parcels. The Federal parcel is immediately contiguous to U.S. Highway 160 and has similar habitat types as the non-Federal parcel. As an alternative to the land exchange, the USFS will analyze a potential easement across Federal lands to provide access to, and allow development of, the non-Federal parcel.

The LMJV private landowners are interested in the development of their lands for the Village at Wolf Creek (a residential development and associated infrastructure). Because LMJV holds title to land within the boundaries of the National Forest, the USFS is required to provide legal access while minimizing environmental impacts. Any method of accommodating access to private land within the project area needs to be sensitive to the operations and recreational experiences at the Wolf Creek Ski Area. LMJV would seek a phased development scheme through Mineral County and envision plans for the Village at Wolf Creek to include a four-season resort with a variety of hotels, homes and condominiums; approximately 200,000 square feet of commercial space; and ancillary infrastructure such as roads, water treatment and storage, wastewater treatment and disposal, power distribution, and a grade separated interchange off U.S. Highway 160. Although this development would be largely regulated by Mineral County, it appears that the land exchange is necessary to make the plans viable.

The USFS acquired lands would provide additional skiable terrain to the Wolf Creek Ski Area. The USFS believes that a land exchange may be in the public interest and identifies potential public benefits to include the following: development of private lands further away from Wolf Creek Ski Area, reduced impacts to skiers and ski area operations; more suitable location for residential development and associated infrastructure due to topography, natural resources, and proximity to U.S. Highway 160; a net gain of wetlands and perennial streams in public ownership; a lower density development; and elimination of the need for transportation and utility corridor easements across USFS land.

Key Issues Identified by EPA

Based on the general information available in the NOI, it appears that most key issues of concern are not necessarily related directly to the land exchange proposal but to the connected action for development that would ensue. EPA has identified initial key issues associated with the land exchange and connected development that must be clearly addressed in the EIS so that potential impacts to public health and the environment can be fully evaluated and disclosed. These key issues include: (1) impacts on aquatic resources, including wetlands and water quality, (2) impacts on air quality, including increased air emissions associated with connected development and infrastructure, (3) impacts on habitat and special status species and (4) environmental justice and public participation. Along with identifying impacts of the land exchange, the EIS should assess any direct, indirect and cumulative impacts associated with the connected development. We recommend that the EIS disclose the impacts of all reasonably foreseeable actions on environmental resources in a way for the decision-maker to be able to effectively plan to reduce impacts on such resources to the fullest extent possible. A no action alternative that results in no ski area expansion or private development also needs assessment.

(1) Aquatic resources in the proposed land exchange area are of critical importance, rendering it critical to evaluate and mitigate associated impacts.

EPA considers protection of aquatic resources, including wetlands, riparian areas, water quality and water quantity, to be among the most critical issues to be addressed in any NEPA analysis for potential development in montane areas. Most activities resulting from the proposed land exchange (related to the connected development and additional skiable terrain) have the potential to adversely impact aquatic resources, including wetlands, streams, riparian areas, and their supporting hydrology. Since the proposed land exchange may ultimately result in adverse impacts to aquatic resources, EPA recommends that USFS pay particular attention to ensuring a robust treatment of the issue in the EIS.

Given EPA's concerns regarding aquatic resources, we recommend that USFS position itself (and others) to fully evaluate impacts resulting from the alternatives by including the following in the EIS:

- A thorough characterization of existing aquatic resources and baseline conditions in the proposed land exchange area, including quality, quantity and location of aquifers, surface waters, wetlands, streams and ephemeral drainages; watershed conditions; sediment loads; vegetation cover and condition; soil conditions; and wildlife and fish population health and habitat.
- Disclosure of impacts on these baseline conditions, including direct, indirect and cumulative effects from the connected residential and commercial development/infrastructure and potential ski resort expansion, that would result from activities associated with each alternative. Impacts may include changes in surface and groundwater hydrology supporting streams and wetlands.
- A map and summary of all waters, including tributaries, wetlands types and acreage in the analysis area.
- A description of any wetlands impacts, temporary and permanent, direct and indirect, past and foreseeable. Such impacts may include proposed or inadvertent functional conversion of wetlands (e.g., forested to shrub-scrub); areas of wetland ski-over; changes to supporting wetland hydrology (e.g., snow melt patterns, sheet flow, and groundwater hydrology); grading impacts on side-slope wetlands; and wetland disturbance from grading and dredge and fill activities for residential/commercial development and related infrastructure, and new/expanded/relocated ski area facilities or utilities.

Water Quality Data: Baseline water quality data are critical given proximity to the headwaters of the Rio Grande River. To provide a baseline for future monitoring of impacts, we recommend the EIS provide the following:

- A summary of the best available monitoring data on water quality and stream health for the project area, including *Escherichia coli*, nutrient concentrations, water temperatures, and turbidity data, if they exist.
- Identification of any significant gaps in data that could affect the decision and/or that may be targeted for collection under the project monitoring plan.

The NOI indicates that known petroleum contamination, originating from the Colorado Department of Transportation (CDOT) maintenance yard on USFS land within the ski area permit boundary, has impacted the groundwater of the alluvial aquifer and may extend onto the Federal parcel proposed for the land exchange. Since mitigation efforts are on-going, we recommend discussion of how these efforts would be impacted by transfer of the land to private ownership.

Impaired Waterbodies: We recommend the EIS include a discussion of any Clean Water Act (CWA) Section 303(d) impaired or threatened waterbody segments within, or downstream of, the project area. The Colorado Department of Public Health and Environment (CDPHE) can identify/validate any such CWA Section 303(d) listed waterbodies potentially affected by the project. If CWA Section 303(d) listed waterbody segments occur within, or downstream of, the proposed project area, then we recommend that the EIS describe how approval of the proposed land exchange project and resulting development (including future wastewater discharges) might affect these waterbodies, particularly the water quality parameters causing the CWA Section 303(d) listing. Proposed activities in the drainages of CWA impaired or threatened streams must be consistent with the State's Total Maximum Daily Load

developed for the listed waterbody. We recommend that mitigation or restoration activities be included to reduce existing sources of pollution to offset or compensate for pollutants generated.

Wetlands: Impacts to the types and functions of wetlands in mountain environments are difficult or impossible to mitigate due to shorter growing seasons and low night time temperatures. To ensure that wetlands are protected to the greatest extent possible, it may be necessary to use Best Management Practices (BMPs) to protect sensitive soils, wetlands, riparian areas, meadows, stream crossings, and critical habitat. To further ensure avoidance of adverse impacts to aquatic resources, we recommend that any development plans incorporate buffers away from these resources and consider the potential to avoid indirect adverse impacts to wetland/stream hydrology from subsurface development associated with basements and foundation drains.

The USFS has indicated that the natural and beneficial values of acquired wetlands would equal or exceed those of conveyed wetlands. This determination should be well documented in the EIS. Due to the historically high level of interest in LMJV's development plans, we recommend that the wetland delineation, including dominant plant communities, and mapping reports, along with the actual data/field reports for vegetation and soil profiles, be made available to the public.

EPA recognizes the challenges facing the USFS in managing wetland resources in forested montane environments; however, wetlands may be better protected under Federal ownership than private ownership because of the protections afforded by Executive Order 11990, Protection of Wetlands. We recommend the EIS discuss the relative level of protections of the subject wetlands under Federal versus private ownership, including how wetlands would be identified, avoided, or ultimately mitigated under each scenario. We recommend a thorough discussion of impacts to wetlands and riparian habitat that may result from development of LMJV lands.

Conditional water rights are held by LMJV, but are not proposed to be part of the land exchange. The use of these rights will require establishment of a conveyance system for the water utilities across USFS land to potential storage facilities on private land. We recommend that the EIS disclose surface disturbance impacts related to installation of this system including:

- the location and amount of pipe proposed in wetlands (if applicable),
- type and diameter of pipe to be installed,
- width and depth of the necessary trenches, including locations of cutoff collars to prevent drainage along the pipes;
- location on which the soil from the trench would be temporarily stored;
- amount of wetland soil compaction expected from related installation equipment; and
- identification of fill material that would be placed in the trench to promote drainage (e.g., gravel).

We recommend identification of mitigation measures on all properties that would both minimize the extent of wetlands impacts and lessen agency mitigation concerns from the water/utility conveyance systems. Such measures include the following:

- Re-vegetate with removed shrubs and mats of herbaceous cover (carefully stockpiled on-site) and appropriate high altitude wetland seed species as soon as possible after the disturbance. Monitor for five years to ensure successful re-vegetation of impacted montane wetland communities.

- Use bulkheads/box structures to minimize disturbance area from side casting and trench width.
- Use fabric or hay layers to protect existing vegetation from stockpiled dredged material and to mark existing contours.

The use of this water is necessary to enable the LMJV development plans to move forward but would result in reduced flows to meet municipal water demand in general. Therefore, we recommend discussion of direct and indirect impacts to aquatic resources that may result from these reduced flows for municipal water purposes. This analysis should evaluate the cumulative impacts of reasonably foreseeable development in the surrounding area, including private lands and potential land use changes associated with resort developments of this type.

Discharge of dredged or fill material into waters of the United States, including wetlands, are regulated under CWA Section 404. This permit program is administered jointly by the U.S. Army Corps of Engineers (Corps) and EPA. A CWA Section 404 permit, which may be required for activities resulting from approval of the proposed land exchange (e.g., a water conveyance system across USFS land; potential ski area expansion related to addition of skiable terrain; and/or private residential and commercial development impacts), includes environmental requirements to first avoid adverse impacts to aquatic resources unless the proposed alternative has been clearly demonstrated to be the least environmentally damaging practicable alternative. Please consult with the Corps to determine the applicability of CWA Section 404 permit requirements to planned LMJV development activities or potential ski area expansion activities. If CWA Section 404 permit requirements would be applicable, we recommend the EIS provide full disclosure of the related direct, indirect and cumulative wetland impacts, how LMJV will demonstrate compliance with CWA Section 404 requirements and how mitigation measures will be completed. Since LMJV is planning a phased development, all activities requiring a CWA Section 404 permit must be evaluated under one permit to avoid piece meal permit decisions. Without this critical information, the Corps may need to supplement the EIS to meet its NEPA compliance requirements, adding costs and delays to future projects. Including the CWA Section 404 permit information in a single document sufficient to support all pending permit decisions will ensure that the decision makers and the public are able to understand and consider all impacts at one time.

We recommend avoiding aquatic resources that are considered “difficult to replace” under the Final Rule for Mitigation for Losses of Aquatic Resources [33 CFR Parts 325 and 332; 40 CFR Part 230 (73 FR 19594, April 10, 2008)]. The rule emphasizes the need to avoid and minimize impacts to these “difficult-to-replace” resources (i.e., fens and streams) and requires that any compensation be provided by in-kind preservation, rehabilitation, or enhancement to the extent practicable. We recommend aquatic ecosystem restorations and mitigation practices that require soil profiles and hydrology to be re-established as much as possible to the original state. In addition, EPA recommends the USFS consider the mitigation rule to protect aquatic resources even when a CWA Section 404 permit is not required.

Indirect and Cumulative Impacts: EPA recommends the EIS include information regarding the impacts from the planned development on the non-Federal parcel, as well as potential expansion/improvements of the ski area. It appears that this development could substantially increase ski season use of the ski area as well as non-ski season use of the ski area and surrounding Forest. The EIS should quantify the potential number of residential and lodging units anticipated for development, the resident-plus-visitor population anticipated for the Village at Wolf Creek, and foreseeable road and parking lot construction. The NOI indicates that a grade-separated interchange off U.S. Highway 160 would be required to be

built at the initial stage of the LMJV development plans and will be analyzed as part of USFS's land exchange proposal. We recommend that analysis of this interchange include indirect impacts to waters beyond the proposed interchange and highway easement, such as hydrologic changes and water quality impacts from erosion and contaminants caused by runoff from increased impervious surface area.

Planned and potential developments may result in the following indirect impacts to aquatic resources:

- Wetlands and riparian area impacts from up-gradient or adjacent development, grading, roads, ski terrain expansion, potential ski area facility improvements, increased year-round visitation, increased demand for hiking/biking trails and picnic facilities, and changes to hydrology;
- Water quality impacts from wastewater disposal, sediment and lawn chemicals; and
- Water quantity impacts from domestic and commercial water use, changes in stormwater runoff from new impervious surfaces, and down-cutting of streams.

There may be mitigation measures worth considering for road related impacts to aquatic resources. We support the use of BMPs to protect water quality from adverse impacts during road construction and from storm water runoff. Provisions for hazardous waste containment in case of a spill, and the means of collection and treatment of storm water runoff both during and after construction, are recommended.

EPA's general recommendations regarding roads include the following:

- Locate roads away from streams and riparian areas where possible;
- Locate roads away from steep slopes, landslide prone areas, and erosive soils;
- Minimize the number of road stream crossings;
- Construct unavoidable stream crossings during periods of low flow to avoid fish spawning and incubation periods, and/or dewater relevant stream segments prior to construction;
- Provide adequate road drainage and control surface erosion to avoid routing sediment to streams;
- Use bottomless or textured bottom culverts if possible;
- Design roads to allow for natural drainage patterns; and
- Use more detention basins and restoration projects to decrease impacts to water quality from deposition of pollutants/sediment from runoff and highway interchange maintenance.

We recommend discussion of how impacts associated with development will be mitigated to protect forest resources and how implementation of such measures will be ensured (e.g., commitments attached to the proposed land exchange or county regulation).

(2) Air quality impacts from increased air emissions associated with connected development and infrastructure are another critical concern that must be fully evaluated.

The project area is approximately 18.5 miles from the Pagosa Springs PM₁₀ maintenance area and 1.5 miles from a mandatory Class I Federal area (Weminuche Wilderness Area). In addition to health-based standards to protect ambient air quality, the Clean Air Act (CAA) requires special protection of visibility in the nation's large National Parks and Wilderness Areas (identified as mandatory Class I Federal areas). EPA's CAA implementing regulations require states to submit State Implementation Plans that, among other things, demonstrate attainment of the National Ambient Air Quality Standards (NAAQS), as well as reasonable progress toward the national visibility goal. Actions by Federal Land Managers that

lack adequate mitigation of air quality impacts could impede a state's ability to meet CAA requirements.

Data: Given EPA's concerns regarding air quality, we recommend that USFS position itself (and others) to fully evaluate impacts resulting from the alternatives by providing a thorough characterization of existing air quality conditions in the area. To that end, we recommend the EIS include the following:

- Identification of sensitive receptors (such as population centers and Class I and Sensitive Class II areas in the vicinity).
- Airshed classifications and baseline conditions at nearby population centers.
- Trending of air quality at the nearby Class I areas over the past several years.

Such data are readily available from the Colorado Air Pollution Control Division (APCD) and/or the EPA AirExplorer site (<http://www.epa.gov/airexplorer/>) and the VIEWS site for air quality related values (AQRVs) (<http://views.cira.colostate.edu/web/>). Information regarding current conditions will be an important tool for monitoring the impacts of the various activities that may result from approval of the proposed action. Decision-makers will need to understand baseline conditions in an effort to ensure that USFS activities, when combined with air quality impacts from external sources, do not adversely impact the NAAQS or AQRVs such as visibility.

Indirect and Cumulative Impacts: Decision-makers and the public also need to understand the magnitude of air emissions that may result should the proposed land exchange occur. Since the proposed land exchange would allow LMJV to move forward with its four-season resort residential/commercial development plans and Wolf Creek Ski Area would gain additional skiable terrain, indirect impacts to air quality resulting from development of onsite power sources, potential use of fireplaces and woodburning stoves, and increased traffic congestion at full-buildout are of particular interest. Mitigation measures, such as shuttle services to the ski area/other recreational areas and gas fireplace limitation, may be of value to planning considerations at this early stage of the process.

We recommend a discussion of likely vehicle miles traveled associated with increased residential and visitor capacity, as well as the related mobile source emissions inventory, be provided in the EIS. We fully support inclusion of the grade separated interchange off U.S. Highway 160, with full-buildout traffic estimates, in the air quality analyses for the EIS. We recommend estimating mobile source emissions with EPA's MOVES2010a mobile sources emission model and re-entrained road dust emissions with use of EPA's Compilation of Air Pollutant Emission Factors (AP-42). Furthermore, providing the emissions associated with construction activities, including interchange, roadways and residential/commercial development may provide the decision-maker with additional valuable information. If total emissions are substantial, then an air impact analysis presenting direct, indirect, and cumulative impacts on sensitive receptors is reasonable.

We believe that a detailed transportation analysis in the EIS will be most effective in ensuring that the USFS decision, the CDOT/Federal Highway Administration permitting process, and the public are fully informed of total project impacts. We recommend close coordination and consultation with CDOT and the Colorado APCD to ensure that specifics of location and design of the Highway 160 interchange are clearly defined prior to analysis and that any modeling, mitigation, or other measures to meet Clean Air Act requirements for the proposed land exchange and resulting development are addressed.

Climate Change: We recommend the EIS include a discussion of climate change considerations,

including how the USFS can reduce the impacts of the proposed project on climate change and monitor for effects of climate change on forest resources. In addition, we recommend the EIS include a qualitative analysis and disclosure of greenhouse gas (GHG) emissions that are likely to occur should the land exchange proposal move forward allowing the residential/commercial development and infrastructure to be built. Given the large development plans envisioned, resulting GHG emissions may be significant and mitigation options may be available to address these indirect emissions.

(3) Impacts on habitat need to be fully evaluated given the potential importance of the area to special status species, including Canada lynx.

The project area may contain special status species, including Endangered Species Act-listed threatened species (Canada lynx and Mexican spotted owl) and endangered species (Uncompahgre fritillary butterfly and Southwestern willow flycatcher), as well as the candidate species, Rio Grande cutthroat trout. We recommend early coordination with the U.S. Fish and Wildlife Service (USFWS) on this project. To best inform the decision-maker and the public, we recommend the EIS include the following:

- A summary of the status and trends of project area threatened, endangered, and sensitive (TES) species and potential suitable habitat acreage.
- Identification of lynx analysis units within or near the project analysis area.
- A summary of how requirements of the Southern Rockies Lynx Amendment (SRLA) would apply to this project and a clear explanation of each alternative's consistency with the SRLA.
- Disclosure of any impacts to TES species and habitat resources (including habitat fragmentation) associated with the proposed land exchange, as well as direct, indirect and cumulative impacts associated with the resulting development in the surrounding area.
- USFWS recommendations including any related design criteria, mitigation and monitoring requirements to reduce potential impacts to TES species from the proposed land exchange and resulting development.
- Adequate design criteria, mitigation and monitoring measures, developed in coordination with the USFWS and the Colorado Division of Wildlife, to ensure the proposed project and resulting development do not negatively impact habitat for migratory birds, bald eagles, or other species.

The USFS has indicated that its land for the proposed exchange contains habitat identified by the USFWS as necessary for recovery of Canada lynx. However, it appears that USFS may have already concluded that lands can be conveyed since similar habitat is located on the non-Federal parcel. We recommend early coordination with the USFWS and full disclosure of detailed information to support any such determination.

(4) Environmental justice and public participation will be important components of this EIS.

The analysis area may contain minority and/or low-income populations that could experience social and economic impacts resulting from development of the size envisioned by LMJV. Therefore, EPA recommends a robust environmental justice analysis be included in this EIS. We encourage the USFS to consult the Council on Environmental Quality's new posting of resources on NEPA and environmental justice at http://ceq.hss.doe.gov/nepa_information/agency_resources.html.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," applies to federal agencies that conduct activities that could substantially affect human health or the environment. EPA believes that the USFS can comply with this order by disclosing and evaluating any environmental justice concerns associated with potential impacts to minority and/or low-income communities from reasonably foreseeable development resulting from the proposed land exchange. There may be water quality and air quality impacts of particular concern to the health of local residents; therefore, EPA recommends the following:

- A general evaluation of the geographic scope of the impact area and identification of minority, low-income, and tribal communities within that scope.
- A determination of whether there would be disproportionately high and adverse impacts, including cumulative impacts, on the identified communities.

These evaluations can be accomplished by completing the following:

- Disclosure of whether and where environmental justice communities are located in the impact area, including a description of the methodology and criteria utilized for identifying low income and minority communities, the sources of the data used for these analyses, and the references used for establishing the criteria.
- To the extent that information is available, a discussion of the potential direct, indirect and cumulative environmental impacts of development on these communities.
- An evaluation of the socio-economic impacts to the local communities, including any additional loading placed on local communities' abilities to provide necessary public services and amenities associated with development resulting from the proposed land exchange. Such impacts may include housing and school needs for development workers and families, burdening water, waste and wastewater handling facilities needed to accommodate residential/commercial development, and increased road traffic with associated dust and hazardous material spill potential. Methods to avoid or minimize such impacts should be discussed.

Finally, given the long history of controversy surrounding the LMJV development plans, EPA applauds USFS efforts for early involvement of all local communities and stakeholders. We encourage thorough EIS disclosure of efforts taken to ensure effective public participation and to respond to public concerns.

We appreciate the opportunity to provide our scoping comments at this early stage of the process. These comments are intended to help ensure a comprehensive analysis of environmental impacts, adequate public disclosure, appropriate mitigation and an informed decision-making process. If we may provide further explanation of our comments, please contact me at 303-312-6004, or your staff may contact Amy Platt, at 303-312-6449.

Sincerely,



Larry Svoboda
Director, NEPA Compliance and Review Program
Ecosystems Protection and Remediation

